

REMARKS

The undersigned notes with appreciation the acceptance of the revised formal drawings filed on October 13, 2005.

Claims 1 - 10 remain active in this application. Claims 1, 2, 5, 6 and 10 have been amended to clarify the subject matter contained therein, as well as correct the typographical error in claim 10 noted by the Examiner. Support for these amendments can be found throughout the specification. No new matter has been introduced into the application.

Claims 1 - 10 have again been rejected under 35 U.S.C. §103 as being unpatentable over Maissel et al. in view of Bryant et al. This ground of rejection is again respectfully traversed.

The present invention discloses a program selection device and method that gathers data based on a user's interest or preference. By calculating the rate at which a user views a particular type of program, the controller of the program selection device specifies a program type and selects an elementary stream relating to that specified program type. Neither Maissel et al. nor Bryant et al., either alone or in combination, teach or suggest such a program selection device whereby an elementary stream corresponding to a predetermined type is selected based on the information for identifying an elementary stream included in an electronic program guide (EPG).

Maissel et al. teaches the use of an intelligent agent to be used with an EPG for a television system. Although Maissel et al. appears to teach the collection of program characteristics over a period of time regarding the various characteristics of programs viewed by a user, (column 12, lines 16 - 34, in Maissel et al.), the Examiner has acknowledged that Maissel et al. fails to specifically disclose the identification of types of multiplexed elementary streams and a means for selecting an elementary stream. The Examiner has cited Bryant et al. to supply this missing teaching of Maissel et al.. However, it is respectfully submitted that the combined teachings of Maissel et al. and Bryant et al. would not answer the problem of determining a user's viewing preference which supports the meritorious function of using a controller to *select* an elementary stream, from a plurality of elementary streams, that corresponds to the type of

program specified based on calculated rates, where the *plurality* of elementary streams are *received together* with a selected program.

Bryant et al. teaches the broadcasting of programs distributed from a broadcast network to equipment on a user's premises. Bryant et al. further teaches that a broadcaster can reach different target audiences by using elementary streams. However, such a use of elementary streams would be entirely defeated by accommodation of user preferences as in Maissel et al. (and vice-versa) since the elementary streams are selected for each of the target audiences prior to transmission as they must be to achieve control *by the broadcaster*. Further, no teaching of a user control or collection of user preference data based on user selection of program types exists anywhere in the Bryant et al. reference. Therefore, Bryant et al. fails to teach selection between elemental streams of fill material in response to collected user selection data forming a user profile or in connection with types of programs in respective elemental streams and performing selection from a plurality of ESs transmitted with the program. Rather, Bryant et al. teaches selection of fill material data streams based *only* on stream type in a set top box (STB) and teaches away from accommodating user preferences in any way in order to transmit particular material to particular target audiences.

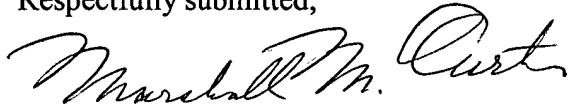
For the aforementioned reasons, modification of Maissel et al. in accordance with Bryant et al. or vice-versa would prevent either the systems of Maissel et al. or Bryant et al. from operating in the intended manner or to produce the intended function. To modify a user profile formed by collected user data with elementary streams as shown in Bryant et al. would be a hindsight reconstruction since the operation of Maissel et al. is completely different, and because Bryant et al. is not shown as being applicable to a program selection device as disclosed is the present invention. If Maissel et al. were to be modified in accordance with Bryant et al., the result would still fail to answer the recitations of using a controller to *select* an elementary stream from a plurality of elementary streams which are *received together* with a selected program that corresponds to the type of program specified based on calculated rates of user viewing. In any case, the combination of teachings would not provide evidence of a level of ordinary skill in the art which would support the conclusion of obviousness asserted.

Accordingly, it is respectfully submitted that the rejection based on Maissel et al. and Bryant et al. is clearly improper and in error and the Examiner has failed to make a *prima facie* demonstration of obviousness of any claim in the application. Therefore, reconsideration and withdrawal of this rejection of claims 1-10 is respectfully requested.

Since all rejections, objections and requirements contained in the outstanding official action have been fully answered and shown to be in error and/or inapplicable to the present claims, it is respectfully submitted that reconsideration is now in order under the provisions of 37 C.F.R. §1.111(b) and such reconsideration is respectfully requested. Upon reconsideration, it is also respectfully submitted that this application is in condition for allowance and such action is therefore respectfully requested.

If an extension of time is required for this response to be considered as being timely filed, a conditional petition is hereby made for such extension of time. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marshall M. Curtis". The signature is fluid and cursive, with the first name "Marshall" and last name "Curtis" being clearly legible, and "M." in the middle.

Marshall M. Curtis
Reg. No. 33,138

Whitham, Curtis & Christofferson, P. C.
11491 Sunset Hills Road, Suite 340
Reston, Virginia 20190

(703) 787-9400
Customer Number: 30743